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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.[MD]No.17827 of 2020

and

W.M.P(MD) No.14857 of 2020

V.Mariappan

... Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Finance Department,
Chief Secretariat, St.George Fort,
Chennai-600009.
- 2.Principal Secretary to Government (Expenditure)
Government of Tamil Nadu,
Finance Department,
Chief Secretariat, St.George Fort,
Chennai-600 009.
- 3.The Principal Accountant General
(Accounts and Entitlements),
361, Annasalai,
Teynampet, Chennai-600 018.
- 4.The Commissionerate of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road,
Chennai-620 028.
- 5.The Assistant Director,
Municipal Finance Audit,
Kuralagam 4th Floor,
Chennai-600108.
- 6.The Commissioner,
Municipal Office,
Virudhunagar-626001.

... Respondents

PRAYER : This Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order of fourth respondent in letter No.மு.மு.எண். 30139/நகரா(6)/2016 dated 01.02.2017 and quash it as illegal and subsequently direct the third respondent to sanction and pay arrear the monthly pension in old pension scheme framed under Tamil Nadu Civil Service (Pension) Rules and consequent benefits derived therefrom, within the time limit as stipulated by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>



For Petitioner
For R-1 and R-2
For R-3

: Mr.K.K.Samy
: Mr.M.Jeyakumar
Additional Government Pleader
: Ms.K.Mahalakshmi

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ORDER

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2.The writ petition has been filed to quash the impugned order of the fourth respondent in letter No.K:.K.vz;.30139/eXr(6)/2016 dated 01.02.2017 and consequently, to direct the third respondent to sanction and pay arrears of the monthly pension in old pension scheme framed under the Tamil Nadu Civil Service (Pension) Rules and consequent benefits derived therefrom, within the time limit as stipulate by this Court.

3.It is the contention of the petitioner that he joined service in the sixth respondent office as Sanitary Worker on 14.06.1991 and the petitioner was appointed in the regular pay scale with effect from 04.07.2001. Subsequently, he was retired from service on 31.03.2014. Therefore, the petitioner is entitled to get pension under the Old Pension Scheme. In this regard, he has made a representation on 19.07.016 itself. However, the fourth respondent passed an order only on 01.02.2017, rejecting the claim of the petitioner stating that when the petitioner was appointed, there was a ban for appointment. Against the said order, the present writ petition has been filed.

4.The learned counsel for the petitioner would further submit that the petitioner's service was regularized on 04.07.2001 that is well before the ban. The ban has come into effect only from 3.11.2001. Therefore, the petitioner is entitled to get pension under the Old Pension Scheme.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that there was an audit objection on 28.11.2014 for provision of pension under the Old Pension Scheme to the petitioner. Therefore, the respondents have not given the pension. He would further submit that the sixth respondent forwarded a proposal for pension to the fifth respondent vide communication dated 19.07.2016. Again, the sixth respondent recommended for provision of pension on 07.03.2019. Based on the said recommendation appropriate direction may be issued to reconsider the petitioner's request.

6. Heard the learned counsel appearing on either side and perused the materials placed on record.



7. The petitioner was originally appointed as Sanitary Worker on 14.06.1991 and thereafter, his service was regularized w.e.f 04.07.2001. As per G.O.Ms.No.463, Finance (CMPC) Department, dated 23.11.2001, ban for appointment came into effect only from 23.11.2001 and in the present case, the petitioner's service was regularized on 04.07.2001, which is well before G.O.Ms.No.463 dated 23.11.2001. Therefore, the petitioner's service was regularized, when the ban was not come into force. Therefore, the audit objection raised by the third respondent dated 28.11.2014 is nothing but a misunderstanding of the ban order is by the Government vide G.O.Ms.No.463 dated 23.11.2001. Therefore, the third respondent is required to remove the audit objection and take necessary steps to provide pension under the old pension scheme.

8. Further, this Court would like to refer the judgment in W.A. (MD) No.273 of 2011 dated 02.03.2011, wherein the Hon'ble Division Bench of this Court has held as follows:-

This writ appeal is preferred against the order of the learned single Judge dated 02.12.2010 made in W.P(MD) No.5475 of 2008, wherein the respondent has prayed for issuing a writ of mandamus directing the appellants herein to regularise the respondent's service from 01.09.2002 as per G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 01.09.2002 to 01.03.2006 with all attendant benefits.

2. The case of the appellants is that the respondent, who was employed as NMR from 1994 was given the post of Sweeper on 31.08.2001 in terms of G.O.Ms.No.125 Municipal Administration and Water Supply Department, dated 27.05.1999. however, before completion of one year, ban order was issued by the Government in G.O.Ms.No.463 Finance (CMPC) Department, dated 23.11.2001 and therefore, according to the appellants, only after lifting the ban order respondent's service can be brought under the time scale of pay and the same is also clarified in G.O.Ms.No.21 Municipality Administration and Water Supply (MC3) Department, dated 23.02.2006. Following the said Government Order, respondent's service was brought under time scale of pay from 01.03.2006 i.e., after lifting of the ban order.

3. The said contention cannot be accepted in view of the fact that the respondent was appointed as Sweeper on 31.08.2001 i.e., three months prior to imposition of ban order. Moreover, the ban order was issued only for fresh appointments. The respondent having been appointed as NMR in the year 1994 and in turn given the post of Sweeper on 31.08.2001, cannot be treated as fresh appointee. Hence,



the ban order cannot be applied to the respondent's case.

9. On perusal of the above judgment, this Court is of the view that the law is well settled that the ban has come into force with effect from 23.11.2001. In the present case, the petitioner's appointment was regularized on 04.07.2001. Therefore, there is no impediment for the respondents to consider the petitioner's pension proposal as per Old Pension Scheme. That apart the sixth respondent has also made a recommendation to the fourth respondent for provision of pension under the Old Pension Scheme vide communications, dated 19.07.2016 and 07.03.2019.

10. In view of the above, the impugned order of the fourth respondent dated 01.02.2017 rejecting the claim of the petitioner is hereby quashed and the third respondent is directed to pass appropriate orders for provision of pension to the petitioner under Old Pension Scheme within a period of eight weeks from the date of receipt of a copy of this order.

11. In the result, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar (CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

1. The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Finance Department,
Chief Secretariat, St. George Fort,
Chennai-600009.
2. The Principal Secretary to Government (Expenditure)
Government of Tamil Nadu,
Finance Department,
Chief Secretariat, St. George Fort,
Chennai-600009.

<https://hcservices.tn.gov.in/hcservices>



+1CC to M/s.SPL GP,SR.No.24632 dated 09/12/2020

+1CC to Mr.K.K.Samy,Advocate,SR.No.24712 dated 09/12/2020

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and

W.M.P(MD) No.14857 of 2020

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